

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   ANTHONY MICHAEL BRADY,

Case No.: 3:20-cv-00174-RCJ-CSD

4                   Plaintiff

**Order**

5   v.

Re: ECF No. 32

6   BENJAMIN ESTILL, et al.,

7                   Defendants

8                   Before the court is Defendants' motion for leave to file under seal exhibits B, G, and H in  
9 support of their motion for summary judgment. (ECF No. 32.)

10                   "Historically, courts have recognized a general right to inspect and copy public records  
11 and documents, including judicial records and documents." *Kamakana v. City and County of*  
12 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).  
13 ""Throughout our history, the open courtroom has been a fundamental feature of the American  
14 judicial system. Basic principles have emerged to guide judicial discretion respecting public  
15 access to judicial proceedings. These principles apply as well to the determination of whether to  
16 permit access to information contained in court documents because court records often provide  
17 important, sometimes the only, bases or explanations for a court's decision." *Oliner v.*  
18 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*  
19 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

20                   Documents that have been traditionally kept secret, including grand jury transcripts and  
21 warrant materials in a pre-indictment investigation, come within an exception to the general right  
22 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of  
23 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The

1 presumption of access is 'based on the need for federal courts, although independent—indeed,  
2 particularly because they are independent—to have a measure of accountability and for the  
3 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*  
4 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)  
5 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*  
6 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

7       There are two possible standards a party must address when it seeks to file a document  
8 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,  
9 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only  
10 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without  
11 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must  
12 "'conscientiously balance[ ] the competing interests of the public and the party who seeks to keep  
13 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the  
14 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599  
15 (1978)). "Examples include when a court record might be used to 'gratify private spite or  
16 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information  
17 that might harm a litigant's competitive standing.'" *Id.*

18       The good cause standard, on the other hand, is the exception to public access that has  
19 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits  
20 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which  
21 governs the issuance of protective orders in the discovery process: The court may, for good  
22 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or  
23 undue burden or expense.'" *Id.*

1 The Ninth Circuit has clarified that the key in determining which standard to apply is  
2 whether the documents proposed for sealing accompany a motion that is "more than tangentially  
3 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the  
4 compelling reasons standard is applied. If not, the good cause standard is applied.

5 Here, Defendants seek to file exhibits under seal in connection with their motion for  
6 summary judgment, which is unquestionably "more than tangentially related to the merits of a  
7 case." Therefore, the compelling reasons standard applies.

8 Exhibits G and H contain Plaintiff's medical records.

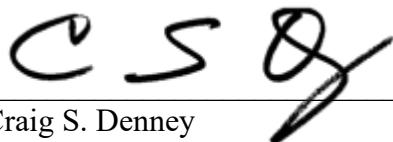
9 This court, and others within the Ninth Circuit, have recognized that the need to protect  
10 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., Moreno v.*  
11 *Adamson*, No. 3:19-cv-0330-MMD-CLB, 2021 WL 76722 (De. Nev. Jan. 7, 2021); *San Ramon*  
12 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, No. C 10-02258 SBA, 2011 WL89931, at  
13 \*n.1 (N.D. Cal. Jan. 10, 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, No. 09-000545  
14 SOM/BMK, 2010 WL4715793, at \* 1-2 (D. HI. Nov. 15, 2010); *Wilkins v. Ahern*, No. C 08-  
15 1084 MMC (PR), 2010 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare*  
16 *Alliance Corp.*, No. CV-08-02381-PHX-FJM, 2009 WL 1212170, at \* 1 (D.Ariz. May 4, 2009).  
17 This is because a person's medical records contain sensitive and private information about their  
18 health. While a plaintiff puts certain aspects of his medical condition at issue when he files an  
19 action alleging deliberate indifference to a serious medical need under the Eighth Amendment,  
20 that does not mean that the entirety of his medical records filed in connection with a motion  
21 (which frequently contain records that pertain to unrelated medical information) need be  
22 unnecessarily broadcast to the public. In other words, the plaintiff's interest in keeping his  
23

1 sensitive health information confidential outweighs the public's need for direct access to the  
2 medical records.

3 Here, the referenced exhibits contain Plaintiff's sensitive health information, medical  
4 history, and treatment records. Balancing the need for the public's access to information  
5 regarding Plaintiff's medical history, treatment, and condition against the need to maintain the  
6 confidentiality of Plaintiff's medical records weighs in favor of sealing these exhibits. Therefore,  
7 Defendants' motion is **GRANTED** insofar as they seek to seal **Exhibits G and H**.

8 Exhibit B is the Investigation Detail report from the incident that is the subject of this  
9 action. Defendants argue that Exhibit B contains a confidential institutional report, and they  
10 argue there is little need for public disclosure of this information as compared to the significant  
11 interest in preserving the confidentiality of this information. They note, however, that Plaintiff is  
12 able to kite the warden to review these documents. Defendants provide no specific, let alone  
13 compelling reason, for sealing Exhibit B. While it is an institutional report, they do not state why  
14 it is confidential, or what the risk to institutional safety or security is in making it available to the  
15 public. Much of the information in the report is disclosed in their own motion for summary  
16 judgment, which is available to the public. Defendants likewise acknowledge that Plaintiff was  
17 permitted to review this exhibit. In sum, the court finds Defendants fail to meet the compelling  
18 reasons standard. Therefore, the motion is **DENIED** insofar as they seek to seal **Exhibit B**.  
19 **IT IS SO ORDERED.**

20 Dated: September 22, 2023

21   
22 Craig S. Denney  
23 United States Magistrate Judge